

August 9, 2007

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Marie Panzarella

Date of Filing: July 13, 2007

Case Number: TFA-0214

This Decision concerns an Appeal filed by Marie Panzarella from a determination issued to her by the Department of Energy's (DOE) Environmental Management Consolidated Business Center (EMCBC). In that determination, EMCBC responded to a request for documents that Ms. Panzarella submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. EMCBC was unable to locate any documents responsive to Ms. Panzarella's request. This appeal, if granted, would require EMCBC to perform an additional search and either release any newly discovered responsive documents or issue a new determination justifying the withholding of any portions of those documents.

I. Background

Ms. Panzarella filed a FOIA request with EMCBC for "all records, contracts, and any other information that the West Valley Demonstration Project [(WVDP)] has on Occidental Chemical Corporation, including any information under Occidental's 'subnames, titles and associations' in regards to the former town of Amherst dump site on Hopkins Rd[.], Amherst, New York; the waste disposal at the Dann Lake, Williamsville, New York; as well as the waste disposal in Ellicott Creek, Amherst, New York between 1950 and 2000." *See* Letter from EMCBC to Marie Panzarella (June 5, 2007) (Determination Letter). In its final response, EMCBC stated that a thorough search was performed for documents responsive to Ms. Panzarella's request. *Id.* EMCBC described the search as follows:

[The] search included an extensive computer search of the WVDP files. The following search terms were used in conducting a keyword search of the files: Occidental; Erie County; Amherst; Williamsville; Dann Lake; Millersport Highway; Ellicott Creek; Hopkins Road; Dump; 2801 Long Road; Grand Island; and the zip code: 14072. Furthermore, the West Valley Nuclear Service Company conducted searches of the WVDP's purchase order, credit card, and

document/archive electronic systems for Occidental Chemical or Hooker Chemical.

Id. EMCBC stated that the search yielded no records responsive to Ms. Panzarella's request. *Id.*

Ms. Panzarella filed the present appeal challenging the adequacy of the search performed by EMCBC. Letter from Marie Panzarella to OHA (dated July 4, 2007) (Appeal Letter).

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted EMCBC to ascertain the scope of the search. EMCBC stated,

[T]he records checked were the Correspondence Tracking and Records Management electronic system. All correspondence ingoing or outgoing is given a tracking number and entered into the electronic system. Records existing prior to the institution of the electronic system were entered into the system when the system was instituted...the system [was] searched based on the keywords as identified in the original FOIA...all records contained in [the Contracting Officer's] official contract files [were searched]. These records comprise five [four-drawer] file cabinets, again by keyword.

Electronic Mail Message from Scott Lucarelli, EMCBC, to Diane DeMoura, OHA (July 23, 2007). EMCBC also stated that WVDP was established in 1982. Prior to 1982, the West Valley site was maintained by New York State. Therefore, according to EMCBC, pre-1982 records need to be sought through New York State's Freedom of Information process because the DOE is not in possession of those records. *Id.*

EMCBC searched the electronic database which contains a record of all correspondence since 1982 for the West Valley Demonstration Project by several relevant keywords derived from Ms. Panzarella's request. In addition, all of the Contracting Officer's official contract files were searched, again by keyword. According to the Determination Letter, additional searches of the West Valley Demonstration Project's purchase order, credit card, and document/archive electronic systems for Occidental Chemical and Hooker Chemical were also performed. Based on this information, we find that EMCBC performed an extensive search reasonably calculated to reveal records responsive to Ms. Panzarella's request. Therefore, despite the fact that it

yielded no responsive records, the search was adequate. Accordingly, Ms. Panzarella's appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on July 13, 2007, by Marie Panzarella, OHA Case No. TFA-0214, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz
Senior FOIA Official
Office of Hearings and Appeals

Date: August 9, 2007